Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
A National Broadband Plan	)	GN Docket No. 09-51
For Our Future	)	WC Docket No. 05-337
High-Cost Universal Service Support	)	FCC 10-51
	)	

COMMENTS OF THE FIVE MACRUC STATES

The undersigned Five MACRUC States of the Mid-Atlantic Conference of Regulatory Utility Commissioners (the Five MACRUC States ")[1] hereby submit these comments in response to the May 13, 2010 Notice of Inquiry and Notice of Proposed Rulemaking published by the Federal Communications Commission (FCC) in the Federal Register at 26906-26915 (the FCC Notice). The FCC Notice established deadlines of July 12, 2010 and August 11, 2010 for filing Comments or Reply Comments, respectively.

In the FCC Notice, the FCC raises several critical issues on future funding for the Federal Universal Service Fund (FUSF) support for telecommunications, including several proposals to transform the current "telecommunications" efforts

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[1] The Delaware Public Service Commission, the District of Columbia Public Service Commission, the New Jersey Board of Public Utilities, the New York Public Service Commission, and the Pennsylvania Public Utility Commission are filing these Comments (the Five MACRUC States). The Five MACRUC States are members of the Mid-Atlantic Conference of Regulatory Utility Commissioners (MACRUC). The views expressed herein are not an official position endorsed by MACRUC members or the National Association of Regulatory Utility Commissioners (NARUC).

of the FUSF into an FUSF focused on broadband deployment or broadband service.[2] The FCC Notice seeks comment on eight important concerns.

The FCC Notice first seeks comment on: (1) a proposal to cap the current high-cost fund of the FUSF at 2008 or 2010 levels; (2) whether any cap should be based on individual components of the FUSF high-cost fund or the fund total; (3) the impact of any proposed high-cost freeze on intercarrier compensation (ICC) rates, particularly those of rate-of-return participants in the National Exchange Carrier Associations (NECA) pool; (4) whether NECA pool participants should transition from rate-of-return (ROR) regulation to price cap carriers as part of the reforms; (5) whether the proposed freeze should be on Interstate Carrier Common Line Support (ICCS); and (6) whether any proposed freeze should be imposed at, before, or after development of the CAF; (7) the proposed reforms of 47 CFR § 54.800-809 regulations governing Interstate Access Support (IAS) and (8) whether a proposed five-year transition in the support provided to Competitive Eligible Telecommunications Carrier (CETCs) should be done all at once, 20% per year, or proportionally by state.

INTRODUCTION

On March 16, 2010, the FCC delivered to Congress "Connecting America: The National Broadband Plan" (NBP) recommending that the FCC adopt cost-cutting measures for existing voice support and, equally important, create a Broadband Connect America Fund (CAF) and Mobility Fund without increasing the overall size of the current FUSF. The NBP wants to reform the current FUSF so that the FUSF can support the deployment of facilities for broadband service and, possibly, the actual delivery of broadband service in areas that would be

[2] *Federal Register,* 26906-26915 (Vol. 75, No. 92), Thursday, May 13, 2010.

unserved without such support or that depend on the FUSF support for the maintenance of existing broadband service. The FCC seeks comment on these "common sense" reforms to cap growth and cut inefficient funding in the legacy high-cost support provided to telecommunications providers nationwide.

As an initial matter, the filed Comments of the Five MACRUC States should not be construed as binding determinations by the respective commissions nor should these Comments are relied upon as determinations adopted by any of the respective commissions in any pending proceeding before the respective commissions. Importantly, the Comments could change in response to changed legal or regulatory events, including review of the filed Comments of other parties in this or other related dockets.

SUMMARY

The Five MACRUC States are net contributors to the FUSF program although there are some states or providers in our region that are net recipients. The Five MACRUC States possess a considerable wealth of experience and resources already devoted to the FUSF and broadband deployment that should be instructive to the FCC. The Five MACRUC States have consistently expressed very grave concern, if not outright opposition, to the explosive growth in FUSF costs over the last ten years. The Five MACRUC States have already witnessed, or paid for, the explosive growth in the high cost fund after that support was dedicated almost exclusively to wireless Competitive Eligible Telecommunications Carrier (CETC) who relied on the Identical Support Rule – a rule correctly eliminated by the FCC.

The Five MACRUC States have several overall concerns. First, the Five MACRUC States do not support dramatic increases in the assessments paid by

consumers or net contributors in the MACRUC region to expand broadband networks or services to providers without preconditions.

Second, any recipient of a frozen and reformed FUSF program must, as a precondition to receiving any FUSF support, undertake and demonstrate implementation of local reforms e.g., local rate increases, access rate reductions, state universal service funds, and demonstrated broadband deployment. States receiving FUSF support should be required to match that support dollar for dollar.

The Five MACRUC States do not support an increased or reformed FUSF that takes revenues from consumers in lower-income portions of our region i.e., the District of Columbia, West or North Philadelphia, Camden, Newark, Wilmington, or our more rural areas, to support lower local exchange service rates, higher intrastate access rates and, now, broadband networks or services delivered by providers in regions without those kinds of difficult reforms in place.

Third, the carriers or states in the MACRUC region should not lose current FUSF support for voice service simply because they have demonstrated broadband programs in place or substantially completed. That support, to the extent there is a transition from voice to broadband, should be returned to MACRUC carriers or states to support demonstrated broadband deployment or support comparable rates for comparable services. This could be in the form of increased FUSF support for the Lifeline broadband adoption programs or similar programs that provide support for consumers that might not otherwise be able to buy broadband service.

To the extent that the FCC decides to promote demonstrated broadband deployment and broadband service, the Five MACRUC States would not be supportive of a reformed and frozen FUSF unless it promotes demonstrated broadband deployment and, even then, there may still be net contributor states that simply do not support using the FUSF for broadband deployment.

Finally, the Five MACRUC States prefer a properly structured auction over use of cost models for allocating funding in the FUSF given the lack of transparency in the FCC's model, the prior experience with models, and the fact that auctions should reduce overall FUSF costs. To be properly structured, any FCC auction must address (a) prequalification of a bidder (including the obligation to provide all supported services with no separate mobility fund); (b) what happens to a current recipient's supported facilities if that recipient is not the successful bidder in a study area where the current recipient is currently providing service; and (c) what happens if the successful bidder ultimately abandons the supported services. If a cost model approach is taken the model must be transparent, subject to prior comment, and the FCC should proceed carefully so that the problems associated with other cost models are not repeated.

EXTENDED DISCUSSION

A. Reliance on Embedded Costs to Determine High-Cost Support

The FCC Notice recognizes that a significant portion of current high-cost support is provided to both incumbent telephone companies and competitive telephone companies based on an incumbent carrier's embedded costs, regardless of whether a competitor could provide service at a lower cost. In 2009, the Commission disbursed almost $4.3 billion in high-cost support, of which $331 million was calculated on the basis of forward-looking costs.[3]

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[3] *In re: High Cost Support Mechanism*, Docket No. 09-51 (April 21, 2010), paragraph 8.

The Five MACRUC States believe that this is a problem for several reasons. First, this reliance on embedded network costs for voice communications ignores the considerable collapse in costs attributed to Moore's Law as recipients have deployed more efficient and less costly digital and/or Internet Protocol (IP) networks to replace older copper and analog networks.[4] The embedded costs reflect the higher cost and less efficient legacy network as opposed to the newer fiber and digital networks deployed in the nation's communications network.

Second, the reliance on older embedded costs creates a larger margin between forward-looking technology costs and backward-looking technology costs that, in effect, may provide recipient carriers with a far wider margin of support than may be appropriate if a forward-looking cost approach were undertaken and imposed by the FCC as part of the high-cost reform.

The Five MACRUC States believe that a reformed cost approach actually provides the FCC with more resources to support any broadband network or services on a going-forward basis compared to retaining the reliance on embedded costs and then trying to leverage those costs to support lower cost broadband.

In addition, the Five MACRUC States suggest that net contributor states with broadband deployment programs already in place retain their cost support for any carrier in their state, provided the recipient or commission can credibly demonstrate substantial deployment of broadband services through reliance on the support they currently receive from the FUSF.

[4] While equipment costs are declining for switching and related functions, it is possible that there may be an increase in costs for things like pole attachments or Rights of Way, particularly if the demands of capital markets create considerable pressure to attract their capital. Consequently, increased costs in one area combined with decreased costs in other areas may not always result in overall reduced costs even as Moore's law reduces equipment costs.

B. NBP Principles

The Five MACRUC States commend the FCC for developing the five principles governing the NBP. This support, however, is diminished because those principles focus on broadband as opposed to traditional voice service. The FCC's principles focus on a proposed Mobility Fund, essentially a fund for expanding wireless voice and broadband services to unserved areas. This would be duplicative and create considerable pressure to increase the size of the FUSF.

The Five MACRUC States are already significant net contributors to the FUSF and are very concerned about, if not outright opposed, to further increases in the size of the FUSF. By inviting reformation of the FUSF to support both broadband service deployment and mobility, the Five MACRUC States believe that the FCC is setting the groundwork for what could be a very much larger, and much more expensive, FUSF that MACRUC state contributors will have to provide even greater support.

If the FCC decides to support both broadband and mobility funds, the Five MACRUC States suggest that there should be at most only one supported provider in any given study area and that provider should be required to deliver both broadband and high-quality voice-grade services in order to receive that support.

The FCC's concern with state and local government delays in siting wireless facilities that were considered a barrier to broadband deployment resulted in the FCC's recent decision to establish a "shot clock" on tower siting.[5] If the

[5] *In Re: Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Docket No. WT 08-165 (November 19, 2009).

"shot clock" rules survive challenge and those rules are implemented, the FCC should closely monitor the results before imposing a financially burdensome decision to provide FUSF support to wireless services from a Mobility Fund.

C. Auctions and Cost Models

The Five MACRUC States preference for auctions or similar competitive procedures of Section 309(j), over models is based on several concerns with the current Cost Model and the state of practical information on broadband deployment, including services.

Because the Cost-Quest Associates' NBP model for allocating FUSF support is considered proprietary by the FCC, the model has not been subjected to any peer review nor has the model been made available for public examination and comment. Moreover, the FCC's reliance on the NBP model ignores whether individual providers can create a business case for building the infrastructure and supporting the operational costs for unserved geographic areas by factoring in current and future broadband revenues.

Further, the Five MACRUC States are particularly concerned about the timing of the FUSF reform and the current broadband mapping initiatives by the states and the National Telecommunications Infrastructure Administration (NTIA). The Five MACRUC States believe the FCC should wait until all the national broadband service maps have been completed before implementing any FUSF reform to create the CAF or Mobility Fund. There is no purpose served by eliminating rural carriers' high cost support because they have deployed broadband in order to pursue an objective whose deployment is uncertain and which relies on a cost model that reflects regression analysis because the reformers lack information.

Given these limitations, the Five MACRUC States agree that the FCC should consider testing the use of an auction system to allocate FUSF support to facilitate broadband service deployment and not rely on an older or reformed cost model.

The Five MACRUC States suggest that the use of an appropriately structured auction process that addresses the issues set out above will actually incent companies to build a business case in order to determine whether to bid, where to bid, and how much to bid.

However, any competitive bidding procedure adopted by the FCC should come with some conditions.

There must be a broadband, voice, and wireless provider-of-last-resort obligation so that one bidder is responsible for all supported services with no separate wireless fund. This is suggested so that broadband is demonstrated to actually be deployed at rates for supported services that are reasonably comparable to those in urban areas as required by Section 254.

The FCC could establish an annual regional broadband service pricing index.[6] Alternatively, the FCC could compare rates in a state or region's most

[6] For example, one based on the regional coverage of the NARUC affiliates: Mid-America Regional Conference; Mid-Atlantic Conference of Regulatory Utility Commissioners; New England Conference of Public Utilities Commissioners; Southeastern Association of Regulatory Utility Commissioners; and Western Conference of Regulatory Public Service Commissioners.

urban area with rates for similar services in the state or region's rural area and support the rate differential.

As noted earlier, the Five MACRUC States recognize that these conditions may be attractive to a successful bidder but then become unattractive. In that case, the initially successful bidder may seek to abandon the supported services.

For this reason, the MACRUC States support an auction approach but recommend that the FCC should proceed carefully on these issues.

If, however, the FCC ultimately decides to rely on a cost model approach, the cost model should be forward-looking and be subject to peer review and public comment. The Five MACRUC States recognize that the last time the FCC developed a forward-looking cost model the result was interminable litigation and untoward results in some regions. Those results, however problematic, pale in comparison to what is likely to occur if the FCC develops a model *sui generis* and imposes that model nationwide without peer review or public comment.

D. Contribution Base and Preconditions to Support

Contribution Base. The Five MACRUC States urge the FCC to simply expand the contribution base beyond interstate revenue for voice communications, including broadband Internet connectivity, Voice over Internet Protocol (VoIP) and wireless services. A broadband network provides service to a plethora of services like internet connectivity, internet service, search engines, plug-and-play devices or services, and the like. Since these services facilitate communications, the Five MACRUC States suggest that all users of an FUSF-supported network be required, at a minimum, to be a contributor to any FUSF support being provided to the network those providers use to deliver their service. In the alternative, providers that do NOT contribute to the FUSF must be, of necessity and fairness, unable to bid in any FUSF broadband service auction.

The Five MACRUC States agree with the NBP that there should be at most one subsidized provider of broadband service per geographic area although, as set out above, that provider should also be required to support any voice communications service as well.

Preconditions to Support. The Five MACRUC States wholeheartedly endorse the NBP recommendation that the FCC encourage states to provide funding to support broadband service deployment and adoption based on a reformed and frozen FUSF. The Five MACRUC States suggest that any recipient state or carrier be required, at a minimum, to demonstrate equivalent local exchange service rates, intrastate access service rate reforms, state universal service programs, and broadband deployment initiatives as a precondition to receiving any FUSF support. The Five MACRUC States do not endorse a FUSF reform that rewards carriers or states without similar documented per capita contributions in place or without support for broadband service deployment in their state or service territories.

It would be inequitable to require net contributor states with successful broadband programs in place to forego support for broadband service deployment and adoption programs while assuming the costs for similar broadband service deployment or adoption programs in other regions without those reforms. The FCC's Notice does not factor in the synergistic benefits of coordinating the funding of broadband infrastructure deployment projects and ongoing operational costs with the existing Rural Broadband Access Loans and Loan Guarantee Program of the USDA Rural Utilities Service (RUS Broadband Loan Program). The Five MACRUC States suggest the FCC give consideration to geographic-specific FUSF broadband auctions with a possible preference for bids from providers that received a loan from the RUS Broadband Loan Program.

The Five MACRUC States suggest that FUSF funding recipients must agree to complete a build-out of service infrastructure by not later than 5 years after the initial date on which the FUSF funds are made available. This mandate is not burdensome because it is similar to the current standard for the RUS Broadband Loan recipients.

Finally, the Five MACRUC States endorse a matching grant program whereby recipients of FUSF would be required to receive a state USF or broadband program grant match that is dollar-for-dollar equal to the support from the FUSF. If states were to match the funding from the FUSF, broadband deployment would occur more expeditiously (a goal emphasized in the BNP) and those states would be more efficient and careful in planning and strategizing their broadband deployment. The matching funding support could also include the documented per capita contribution discussed above. Moreover, this matching state support ensures that states and broadband service providers who request FUSF funding do so responsibly.

E. Targeted Reform: Proposals to cap and reduce cut high cost

The Five MACRUC States agree with the NBP's recommendation that the FUSF should provide funding only in geographic areas where there is no private sector business case to provide broadband and high-quality voice-grade service. The requirement that there be a demonstrated case of "market failure" is a necessary precondition to limiting costs to deploy facilities or underwrite services from the FUSF, an FUSF supported in considerable part from carriers and states in the Middle Atlantic region. Moreover, the requirement that a provider show reforms similar to those in place in the MACRUC region should also mitigate expenses as well.

F. Rural Voice Support.

The Five MACRUC States suggest that any cap set at the 2008 or 2010 level be with conditions. Carriers or recipients that relied on that support to comply with a mandate to provide voice service ubiquitously throughout a study area and to complete broadband deployment commitments should not have that FUSF support eliminated. Any FUSF support for a recipient that has already met any broadband deployment mandate should continue to be provided to the carrier or state, albeit possibly in a "block grant" format, to promote broadband or adoption programs as opposed to just broadband service deployment. Any other approach that takes away support will likely engender litigation.

G. Documented Harm for Lost Voice Support

The Five MACRUC States suggest that any recipient claiming harm due to the cap on legacy FUSF support be required to demonstrate that their current rates for residential voice service already exceed the rates for local exchange carriers serving urban areas in their state(s) or that their rates would exceed any state-determined "affordability" level established pursuant to a state proceeding. Many areas with price cap regulations in place have lower broadband deployment programs compared to carriers in supported areas.[7]

CONCLUSION

The Five MACRUC States urges the FCC to revise the FUSF pursuant to the aforementioned recommendations. These recommendations will equitably reduce the FUSF financial burden on the MACRUC States' ratepayers and promote the deployment of broadband services in unserved areas.

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[7] Federal Communications Commission, September 30, 2009 Meeting, Staff Presentation on Broadband National Plan, Slide 47. Slide 47 showed that 82% of the nation's access lines not upgraded to provide broadband service are owned by three companies i.e., AT&T, Qwest, and Verizon.

On behalf of the Delaware Public Service Commission:

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July 12, 2010

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Docket Nos.
WC 10-91
GN 09-51
WC 05-337
FCC 10-58

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